

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of Raychelle Lance, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner - Appellee,

v

ELROY LANCE,

Respondent - Appellant.

UNPUBLISHED

August 15, 2000

No. 220287

Oakland Circuit Court

Family Division

LC No. 98-607616-NA

and

ROCHELLE ANDERSON A/K/A

ROCHELLE PHINIZY

Respondent.

Before: Owens, P.J., and Jansen and R.B. Burns*, JJ.

MEMORANDUM.

Respondent Elroy Lance appeals as of right from an order of the Family Division of the Oakland Circuit Court terminating his parental rights to his daughter, Raychelle Lance, under MCL 712A.19b(3)(a)(ii) and (g); MSA 27.3178(598.19b)(3)(a)(ii) and (g). Respondent Rochelle Anderson's rights were also terminated. She does not appeal. We affirm.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

The Family Division of the Circuit Court did not clearly err in finding that §§19b(3)(a)(ii) and (g) were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich

331, 337; 445 NW2d 161(1989). The evidence established both desertion and failure to provide proper care and custody with no reasonable expectation that the father would be able to provide proper care and custody within a reasonable time considering the child's age. In addition, no one showed, nor did the court find, that termination of the parental rights of Respondent Elroy Lance was clearly not in the child's best interest. MCL 712A.19b(5); MSA 27.3178(598.19b(5)). Therefore, the court did not err in terminating his parental rights to the child. *In re Trejo Minors*, ____ NW2d ____; (Docket No. 112528, issued 7/5/2000).

Respondent Elroy Lance also contends that the termination of his parental rights for "abandonment" was barred by the doctrine of res judicata (citing *In re Pardee*, 190 Mich App 243; 575 NW2d 870 (1991)). Respondent-Appellant is mistaken. Res judicata does not apply because the subject matter of the second action (termination) was not the same as that of the first action (adjudication). In addition, the adjudication was based on the court's finding " . . . pursuant to MCL 712A.2(b) that the youngster is without proper care, custody and supervision" The termination was based on a separate statutory section [MCL 712A.19b; MSA 27.3178(598.19b)] and resulted, in part, from a finding of desertion between June 2 and December 9, 1998 rather than improper custody prior to June 2, 1998 as with the adjudication. Therefore, because the subject matter of the two proceedings was not the same, res judicata does not apply. *In re Pardee, supra* at 248.

Affirmed.

/s/Donald S. Owens
/s/ Kathleen Jansen
/s/ Robert B. Burns